''(2) evaluate whether the rule is inconsistent with, incompatible with, or duplicative of other regulations; and

''(3) consider whether the estimated benefits and costs of the rule increase or decrease as a result of other regulations issued by the agency, including regulations that are not yet fully implemented, compared to the benefits and costs of that rule in the absence of such regulations.

''(d) LESS BURDENSOME ALTERNATIVES.—If, after conducting an analysis under subsection (a) for a proposed rule that is likely to lead to a significant rule, or a final rule or interim final that is a significant rule, the agency selects a regulatory approach that is not the least burdensome compared to an available regulatory alternative, the agency shall include—

''(1) in the summary section of the preamble a statement that the selected approach is more burdensome than an available regulatory alternative; and

''(2) a justification, with supporting information, for the selected approach.

''(e) REGULATORY DETERMINATION.—

''(1) IN GENERAL.—Except as expressly provided otherwise by law, an agency may issue a proposed rule, final rule, or interim final rule only upon a reasoned determination that the benefits of the rule justify the costs of the rule.

''(2) REQUIREMENTS.—

''(A) ALTERNATIVE.—Whenever an agency is expressly required by law to issue a rule, the agency shall select a regulatory alternative that has benefits that exceed costs and complies with law.

''(B) COMPLIANCE.—If it is not possible to comply with the law by selecting a regulatory alternative that has benefits that exceed costs, an agency shall select the regulatory alternative that has the least costs and complies with law.

''§ 614. Consideration of sunset dates

''(a) SUNSET.—Not later than July 1, 2023, an agency shall, for each proposed rule or interim final rule of the agency that meets the economic threshold of a significant rule described in section 601(9)(A), include an explicit consideration of a sunset date for the rule.

''(b) ELEMENTS.—The consideration described in subsection (a) for a proposed rule or interim final rule described in that subsection shall include an assessment of whether the rule—

''(1) could become outmoded or outdated in light of changed circumstances, including the availability of new technologies; or

''(2) could become excessively burdensome after a period of time due to, among other things—

''(A) disproportionate costs on small businesses;

''(B) the net effect on employment, including jobs added or lost in the private sector; and

''(C) costs that exceed benefits.

''(c) PUBLICATION.—A summary of the consideration described in subsection (a) for a proposed rule or interim final rule described in that subsection shall be published in the Federal Register along with the proposed or interim final rule, as applicable.''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 6 of title 5, United States Code, is amended by adding at the end the following:

''613. Regulatory impact analyses.
''614. Consideration of sunset dates.''.

SEC. 4. JUDICIAL REVIEW.

Section 611(a) of title 5, United States Code, is amended, in paragraphs (1) and (2), by striking ''and 610'' and inserting ''610, and 613''.

By Mr. BOOKER (for himself and Mr. DURBIN):

S. 850. A bill to incentivize States and localities to improve access to justice, and for other purposes; to the Committee on the Judiciary.

By Mr. BOOKER (for himself and Mr. DURBIN):

S. 851. A bill to include a Federal defender as a nonvoting member of the United States Sentencing Commission; to the Committee on the Judiciary.

Mr. BOOKER. Madam President, this Saturday, March 18, will mark the 60th anniversary of the unanimous and landmark Supreme Court decision in Gideon v. Wainwright, which held that every American has the constitutional right in criminal cases, regardless of their wealth and where they were born—they have a right, fundamentally, to the public defense system that we know today.

Before Gideon was decided, people accused of crimes were left to fend for themselves, having to navigate arraignments, plea bargains, jury decisions, trials, cross-examination of witnesses—every part of the criminal prosecution, they had to do it themselves while facing government prosecutors who had the legal upper hand.

Clarence Earl Gideon was a 51-year-old with an eighth grade education who ran away from home in middle school. History describes him as a ''drifter'' who spent time in and out of prison for nonviolent crimes, but history would also come to know him as someone who fundamentally transformed our legal system so that any person without resources accused of a crime has a due process right to a fair trial. You can't have a fair trial without counsel.

In 1961, Gideon was arrested for stealing $5 in change and beer, allegedly doing so from the Bay Harbor Poolroom in Panama City, FL. As James Baldwin would write the same year as Gideon's arrest, ''Anyone who has ever struggled with poverty knows how extremely expensive it is to be poor.''

Gideon, who had spent much of his life in poverty, was too poor to hire an attorney and asked the trial court to appoint one for him. The court denied his request, saying that only indigent defenders facing the death penalty are entitled to a lawyer.

Gideon assumed the burden of defending himself at trial, becoming his own lawyer. He made an opening statement to the jury and cross-examined the prosecution's witnesses. He presented witnesses in his own defense. He declined to testify himself and made arguments emphasizing his innocence.

Despite his valiant efforts, the jury found Gideon guilty of this $5 theft, and he was sentenced to 5 years' imprisonment. But Gideon felt he had been fundamentally deprived of his due process rights.

Determined to prove his innocence, Gideon penciled a five-page, handwritten petition asking the nine Justices of the Supreme Court to consider his case. Against all odds, the Supreme Court granted Gideon's petition.

Gideon would tell the Supreme Court:

> It makes no difference how old I am or what color I am or which church I belong to, if any. The question is I did not get a fair trial. The question is very simple. I requested the court to appoint me [an] attorney and the court refused.

In the Court's unanimous decision, they held that ''reason and reflection require us to recognize that in our adversary system of criminal justice, any person haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him.''

Gideon's case was sent back to the lower court, where he had a lawyer to defend him. It took the jury only 1 hour to come to a verdict and acquit him.

From that time on, the public defense system as we know it today came into existence. Folks who couldn't afford a lawyer 60 years ago are now guaranteed basic legal protection. Public defenders play a sacrosanct role in our society. Every one of America's public defenders embarks on the noble work that is the cornerstone of our legal system, ensuring that every citizen has a right to a fair trial, that every citizen has access to justice within the justice system.

Yet the promise of Gideon, the promise of this decision, still remains unfulfilled. The public defense is under such strain that in many places, it barely functions.

Justice Black declared that ''lawyers in criminal courts are necessities, not luxuries.'' But too often across our country, adequate legal representation is a luxury only afforded to those who are wealthy enough to hire a lawyer.

Despite their important and essential work to the cause of justice, public defenders carry crushing caseloads that strain their ability to meet their legal and ethical obligations to provide effective representation. According to a 2019 Brennan Center report, only 27 percent of county-based and 21 percent of State-based public defender offices have enough attorneys to adequately handle their caseloads. There are counties and States in America where public defenders are responsible for more than 200 cases at one time.

The quality of public defenders also varies from State to State, town to town, case to case. Compared to prosecutors and other attorneys, public defenders are woefully underresourced and underpaid. That is why today, with my friend and colleague from Illinois, Senator DURBIN, I am introducing the Providing a Quality Defense Act to provide funding to local governments to hire more public defenders so that those accused of crimes can receive adequate representation.

The bill will provide funding to increase salaries for public defenders so that they can have pay parity with the prosecutors they face. It will require